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ABSTRACT

In 1976 the Edmonton (Alberta) Public School Board resolved to designate administrative positions on a three-year term. The Edmonton public school local of the Alberta Teachers' Association attempted to prevent the implementation of the new policy. After this attempt was unsuccessful, six employees of the school board who accepted term appointments were charged with unprofessional conduct. When these members appealed, the Teaching Profession Appeal Board determined that a school board has the authority to designate term appointments unless this is specifically prevented in the collective bargaining agreement. The board held that the teachers association may not charge members with unprofessional conduct unless acting in the interest of the public as well as in the interest of the association. (Author/JM)

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TERM APPOINTMENTS OF SCHOOL ADMINISTRATORS: AN ALBERTA CASE

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Introduction

Early in 1976 the Edmonton Public School Board resolved to designate administrative positions on a three year term. The Edmonton Public School Local of the Alberta Teachers' Association with the support of Executive Council and the Representative Assembly of the Association attempted to prevent the implementation of the Board's new policy. Six employees of the School Board who accepted term appointments were charged with unprofessional conduct and served notice to appear before the Association's Discipline Committee.

Legal Setting

The powers and duties of school boards in Alberta are defined by The School Act. Boards are required to:

> . . . make rules for the administration, management and operation of schools . . . but the rules shall not impose duties and obligations on a principal or teacher or other employee contrary to or in conflict with a contract of employment.[1]

At the time of the initiation of the Edmonton Public School Board's new policy, the Act stated that "Unless there is agreement to the contrary a contract of employment between a board and a teacher continues in force from year to year."[2] If a board gives notice of termination of "a contract of employment or of a designation" it shall "specify the reasons for the termination."[3] However, a termination of a designation "does not terminate a contract of employment."[4] Also, a board "shall designate one teacher to

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be the principal of each school" and may "designate any teacher to an administrative, supervisory or consultative position."[5]

In the Province of Alberta membership in The Alberta Teachers' Association is mandatory for all teachers employed by school boards.[6] The Teaching Profession Act states that:

> . . . the employment of a teacher, other than as a superintendent, is conditional upon the teacher being and continuing to be an active member of the association.[7]

The Act defines the objects of the Association to be:

> (a) to advance and promote the cause of education in the Province
>
> (b) to improve the teaching profession . . .
>
> (iii) by promoting the establishment of working conditions that will make possible the best level of professional service, . . . and
>
> (vi) by advising, assisting, protecting and disciplining members in the discharge of their professional duties and relationships.[8]

The bylaws[9] of the Association provide for the establishment of a discipline committee, regulate its mode of operation, and include among other defined offences the following:

> Unprofessional conduct shall include breaches or violations of the ATA Code of Ethics or excessive or flagrant breaches of the ATA Standards of Professional Conduct.[10]

Clause 15 of the said Standards of Professional Conduct states that:

> The teacher adheres to Association policy and seeks to change such policy only through the proper channels of the Association.[11]

Collective agreements between a board and its teachers are regulated by The Alberta Labour Act.[12] Such agreements contain "terms of conditions of employment,"[13] and are binding upon "every employee in the unit" and upon "the employer."[14] Except with the consent of the bargaining agent, no employer shall alter any term or condition of employment once a notice to

commence collective bargaining has been given.[15] The Members' Handbook of the Association contains numerous policy statements specifying items for inclusion in collective agreements.[16]

The following may be said in summary regarding the legal setting for the employment of teachers and school administrators in Alberta: 1) School boards have an obligation to make rules for the administration and operation of schools. 2) Professional employees, with the exception of the superintendent of schools, must be members of The Alberta Teachers' Association. 3) The Association has the power to discipline its members. 4) Collective agreements between a board and its employees are governed by the terms of labour legislation for the Province.

Administrative and Political Developments

The interest of the Edmonton Public School Board regarding term appointments of administrators became evident in discussions during 1974 and 1975. In 1975 two such term appointments were actually made. These developments were being monitored closely by the Edmonton Public School Local and the provincial Association. Early in 1976 the Board gave notice of its intention to formulate a policy regarding term appointments of administrators. A request to meet with the Board Conference Committee was granted and took place on March 9, 1976, with members of the Local Executive Table Officers. Upon request of the Local, the Board postponed immediate action on its resolution, but passed the same on a 4-3 vote on March 23, 1976 as follows:

> 1. That effective June 1, 1976 all Board appointments of a certificated staff to designations or positions which entail allowance or salary beyond the teachers' salary grid shall be for three year terms. . . .[17]

The Board authorized its administrative officers to draft procedures and

guidelines for the implementation of its policy and to bring recommendations to the Board prior to May 1, 1976.

The Board's decision brought in its wake swift action on the part of the Association, which, on March 29, 1976, at its Annual Representative Assembly passed the following resolution:

> That The Alberta Teachers' Association take action to prevent school boards from making fixed term appointments to designated positions.[18]

On April 7, 1976, the general assembly of the Local passed several resolutions including the following:

> 2. . . . that the Edmonton Public School Local go on record that all teachers' designations or contracts of employment remain in force from year to year except where a teacher is designated or employed for a limited term to replace a teacher on leave of absence or on sabbatical leave or as otherwise provided for in the collective agreement.
>
> 3c . . . that the Executive give consideration to, and proceed with actions which might be taken to discourage teachers from accepting term appointments to designated positions.[19]

On April 20, 1976, the table officers of the Provincial Executive of the Association met with the School Board in an attempt to persuade it to abandon its policy. All members of the Local received a memo from the Executive Secretary of The Alberta Teachers' Association, which contained the following paragraphs:

> 4. In view of the solidarity which has prevailed thus far in this issue it would be intolerable to have individuals undermine the collective position taken for the common good. Therefore, <u>all members of the local are hereby advised neither to accept, nor to indicate to Board members or officials preparedness to accept, any term designation</u> under the policy and regulation under the policy . . .
>
> 5. Non-compliance with the above advice, in the opinion of Provincial Executive Council, would constitute <u>unprofessional conduct</u> which could result in <u>discipline proceedings</u>.[20]

On April 27, 1976, the Board announced three term appointments to principalships but, in accordance with The Association's directives, each of the individuals declined the appointment. On April 28, 1976, the Local Council directed its Executive to initiate disciplinary action against any members accepting three-year term appointments.[21]

On June 2, 1976, the Board Conference Committee released a list of about 280 recommended term appointments for Board approval.[22] The same day a meeting was called by the Local for all members having received offers of term appointments. Each was provided a form letter for submission to the Superintendent declining the appointment. On June 3, 1976, the form letter was mailed to all members who had not yet submitted copies of letters declining appointment to term positions. A second letter was mailed on June 8 requesting action by 4:00 p.m. on June 11. On the latter date organized phoning committees read prepared statements to members who had not yet indicated their refusal to accept appointments. On June 16 the Local requested the Association for an investigation of the six administrators who had not declined such appointments.

In the face of teacher reaction the Board suspended its policy on June 17, 1976, reverting to its previous policy in the matter of appointments to designated positions. However, the antagonists apparently had passed beyond the threshold of reconciliation. Six members faced disciplinary action by their Association.

Judicial and Quasi-judicial Proceedings

On May 25, 1976, the Edmonton Public School Board applied to the Trial Division of the Alberta Supreme Court for a ruling to determine whether or not it had the authority under section 82 of The School Act to appoint a

teacher to a designated position (to be a principal, administrator, supervisor, or consultant) for a term of limited duration.

In his judgement[23] of December 31, 1976, Justice T. H. Miller reasoned that "a plain and ordinary reading" of the section persuaded him to hold that "the right to offer an appointment to any individual teacher for a limited duration is incidental to the right to make the appointment in the first instance,"[24] and further, that "no teacher is compelled to accept the appointment on the terms offered, but if they agree to the offer, surely there is an 'agreement to contrary' as is contemplated by Section 76(1)."[25] He read from a 1973 Alberta Board of Reference decision, which said in part that:

> There are no restrictions whatsoever placed by the School Act on the power of designation thus granted nor are there limits set to the terms for which designations of teachers to administrative, supervisory or consultative position may be made.[26]

Justice Miller ruled:

> . . . that the Board does have the power under Section 82 of the School Act to designate a teacher to be a principal, or to occupy an administrative, supervisory or consultative position with the Board for a term of limited duration.[27]

The Association's discipline proceedings had been initiated six months prior to Justice Miller's decision regarding the powers of a school board to appoint teachers to designated positions with term. Whether members were justified in accepting such appointments in violation of Association policy was not yet conclusively determined.

In accordance with the section 16 of The Teaching Profession Act an investigation was made with respect to the professional conduct of the six noncompliant members. After having received the report of the investigating officer, the Provincial Executive Council, in accordance with provisions in Discipline Bylaw number 3, proceeded to formulate a charge and directed the

Discipline Committee to hold a hearing. The charge forwarded to each of six members on October 14, 1976, alleged that each was guilty of unprofessional conduct in that:

> . . . despite the opposition of The Alberta Teachers' Association and the Edmonton Public School Local of The Alberta Teachers' Association to three-year term designations, [he] did not refuse to accept a three-year term designation as . . . with the Edmonton Public School Baord.

And further that:

> . . . [he] flagrantly violated clause 15 of The Alberta Teachers' Association Standards of Professional Conduct by failing to adhere to association policy in not participating in the Association's action taken through the Edmonton Public School Local of the Alberta Teachers' Association to implement policy of the Association relative to term designations.[28]

The hearing before the Discipline Committee had been set for November 16. However, it was postponed, when, on November 4, the six administrators gave notice of intention to apply for a writ of prohibition. The application was heard in the Trial Division of the Alberta Supreme Court in January, 1977, before Justice J. M. Hope who provided his judgement on August 26, 1977.[29]

Justice Hope granted the application and issued a writ of prohibition. The following reasons were included among those which formed the basis of his judgement. He had reservations about the proper constitution of the Discipline Committee. He was concerned that a hearing had been ordered despite the fact that the investigating officer had not found persuasive reasons for framing a charge. Noncompliance with Association policy opposing term designations, he contended, did not of itself constitute unprofessional conduct. He found deficiency in the formulation of the charge and held that there had been failure to communicate adequately the nature of the alleged offences. Also, he held the particular policy of the Association

regarding term appointments to be inconsistent with the School Act which "gives the School Board power to make such appointments from teachers who must be and remain members of the A.T.A."[30]

The judgement of Justice Hope was appealed by the Association in the Appellate Division of the Alberta Supreme Court.[31] In his judgement of December 16, 1977, Justice Moir held that there was no question in his mind about the intention that the Alberta Teachers' Association should have a discipline committee. He contended that "The golden rule of statutory interpretation is that one must ascertain the intent of the Legislature through the language it has chosen."[32] He held the Discipline Committee to be properly constituted and its members lawfully appointed. Holding the action of prohibition to be "entirely premature," he disputed the contention of Justice Hope that such should be granted because the nature of the charge had not been communicated precisely. He argued that:

> Surely if the charge is defective in that it lacks the particulars necessary to know what it is, so that it may be effectively met, the remedy is to ask for particulars. If particulars are refused or if the particulars supplied are defective or objectionable, then, and only then, would prohibition lie.[33]

Justice Moir also held that there was no requirement that the investigator make a recommendation in order for the Executive Council of the Alberta Teachers' Association to be able to proceed.[34] He emphasized that the "grave and important duty" of determining unethical or unprofessional conduct had been entrusted to the profession by the Legislature and that it is not within the powers of a court to determine whether the conduct of a member is ethical or unethical.[35] Justice Moir postulated that:

> It may not follow that, because the School Board may make fixed appointments, it is not contrary to the best interests of the profession and of the public that teachers do not accept such appointments.[36]

The matter should take its course and the respondents would have a statutory right of appeal should a decision be against them. The appeal of the Alberta Teachers' Association was allowed and the order of prohibition quashed. A further appeal by the respondents to the Supreme Court of Canada was denied.[37]

The Discipline Committee held its hearing on June 7, 1978, found the six noncompliant members guilty of unprofessional conduct and recommended a penalty of "severe reprimand."[38]

The six members appealed to the Teaching Profession Appeal Board,[39] their case was heard in December of 1978 and the decision announced on January 25, 1979.[40]

The Teaching Profession Appeal Board found fault with the proceedings of the Discipline Committee in that two charges were laid but that the appellants had not been given the opportunity to enter separate pleas to each charge. Judge S. V. Legg, Chairman of the Appeal Board, held that the appellants "did not receive a fair hearing and the Committee proceeded in a manner contrary to natural justice."[41]

With respect to the first charge the Appeal Board found that the Association had two policies relating to term appointments, neither of which had been placed before the Discipline Committee in any official form.[42] Furthermore, the question of term appointments had been a matter in dispute during the negotiation of the Alberta Teachers' Association with the Edmonton Public School Board for a new contract.[43]

Thus the Board believed that the resolution of the Alberta Teachers' Association opposing term appointments had been to keep the Association in a strong bargaining position and not to "ensure proper standards of competence or ethics," that the power of self-regulation had been "exercised in the interest of the profession or occupation rather than that of the public,"[44]

in the context of the observation of the Commissioner, the Honourable James Chalmers McRuer, contained in the report of the Royal Commission Inquiry into Civil Rights:

> The traditional justification for giving powers of self-regulation to any body is that the members of the body are best qualified to ensure that proper standards of competence and ethics are set and maintained . . . but there is a real risk that the power may be exercised in the interest of the profession or occupation rather than in that of the public. This risk requires adequate safeguards to ensure that injury to the public interest does not arise.[45]

The second charge, apparently laid pursuant to clause 15 of the Standards of Professional Conduct, was held by the Appeal Board to be a "nullity." This clause, quoted earlier, states that:

> The teacher adheres to Association policy and seeks to change such policy only through the proper channels of the Association.

"The paragraph is conjunctive," concluded the Board, "and describes two separate acts, both of which must be breached by the teacher before he or she can be found guilty under the paragraph."[46]

The Appeal Board condemned the "oppressive methods used by certain officials of the Alberta Teachers' Association and of the Edmonton Public School Local Executive to 'pursuade' those teachers who had received term appointments to relinquish them."[47] The Board concluded that the Association resolutions had nothing to do with "standards of competence or anything of an ethical nature" but that these were "simply bargaining directives of the Alberta Teachers' Association."[48] On the basis of that conclusion, the Appeal Board found:

> that a teacher who breached these policies in light of the circumstances surrounding this appeal, is not guilty of unprofessional conduct.[49]

The appeal of each of the appellants was allowed, the finding of

unprofessional conduct quashed, and the severe reprimand imposed upon each appellant ordered expunged from his teaching record.[50] According to The Teaching Profession Act, "The decision of the Board . . . is final and binding on all parties."[51]

Conclusions

Unless negotiated terms to the contrary form part of the collective agreement between a Board and its employees, according to existing legislation a School Board in the Province of Alberta may make term appointments for designated positions. Before charging its members with unprofessional conduct for noncompliance with Association policies, the Association must be able to demonstrate convincingly that it is not acting only in the interest of the Association but also in the interest of its responsibility to the public.

School Boards and teachers' locals must strive to arrive at mutually acceptable ways of resolving differences with respect to working conditions. If they cannot succeed in doing so, it becomes necessary for the Legislature to resolve the problem by amending the legislation--in this case The School Act and The Labour Act--so that individuals, who are concurrently employees of a board and members of a professional association, need not become victims in situations where conflicting policies can be formulated in accordance with statutory powers granted to the respective bodies.

For this particular case, the legal setting is illustrated by figure 1 and the details of steps taken by the adversaries is shown in figure 2.

(Note to the editor: If it is not feasible to include the figures, these along with the last paragraph may be omitted.)

Footnotes

1. The School Act., c. 329, Revised Statutes of Alberta, 1970 (hereafter abbreviated as RSA), s. 65(3d).

2. Id. at s. 76(1). Amendments to the Act (1978) allow a board to "employ a teacher for a complete school year under a contract that terminates at the conclusion of the school year where that teacher was not employed by that board as a teacher in the previous year . . ." (s.76.2).

3. Id. at s. 78(2).

4. Id. at s. 78(4).

5. Id. at s. 82.

6. In Alberta, school boards include those of separate school districts which are organized upon the petition of either the Catholic or Protestant minority within a public school district; in such cases the boundaries of the public and separate school districts are coterminous.

7. C. 362, RSA 1970, s. 5(1).

8. Id. at s. 4.

9. Bylaws of the Association require the approval of the Lieutenant Governor in Council (i.e., the Provincial Government Cabinet), according to c. 362, RSA 1970, s. 15(1).

10. Discipline Bylaws of The Alberta Teachers' Association, no. 9(1).

11. Members' Handbook (1979), The Alberta Teachers' Association, p. 11.

12. C. 33. Statutes of Alberta (hereafter abbreviated as SA).

13. Id. at s. 49(d).

14. Id. at s. 99(1).

15. Id. at s. 154(2).

16. Members' Handbook (1979), pp. 173, 184-186.

17. "Three Year Term Appointments." Special release of the Edmonton Public School Local, A.T.A., March 15, 1976.

18. Memo of the Executive Secretary of the A.T.A. to all members of the Edmonton Public School Local, April 26, 1978. In this memo the Executive Secretary underlines that the motion had been passed unanimously at the Annual Representative Assembly.

19. Local 37 News, April 15, 1976. The same information was provided through an A.T.A. Memo to the presidents of all locals in the province, April 26, 1976.

20. Id., Memo of the Executive Secretary, March 15, 1976.

21. Local 37 News, May 3, 1976.

22. Edmonton Public Schools Staff Bulletin, June 2, 1976.

23. (1977) 2 Alberta Reports, 230-240. Board of Trustees of the Edmonton Public School District No. 7 v. the Alberta Teachers' Association.

24. Id. at p. 236.

25. Id. at p. 237.

26. Id. at p. 238, quoting at page 1 the unreported reference of Woodrow and Lazaruk v. The Board of Trustees of the Edmonton Public School Board No. 7 by Chief Judge N. V. Buchanan, Chairman of a Board of Reference established under Section 84 of The School Act.

27. Id. at p. 240.

28. Report of the Discipline Committee of The Alberta Teachers' Association, June 7, 1978.

29. (1978) 8 Alberta Reports, 54-62. Youngberg et al v. Discipline Committee of The Alberta Teachers' Association et al.

30. Id. at p. 62.

31. (1978) 8 Alberta Reports, 36-54. Youngberg et al v. Discipline Committee of the Alberta Teachers' Association et al.

32. Id. at p. 41.

33. Id. at p. 47.

34. Id. at p. 49.

35. Id. at p. 53.

36. Id. at p. 52.

37. Bulletin of Proceedings taken in the Supreme Court of Canada at p. 15, March 21, 1978.

38. Report to the Discipline Committee, June 7, 1978.

39. Members found guilty of unprofessional conduct may, within 15 days, appeal to the Teaching Profession Appeal Board which is constituted under the terms of section 20 of The Teaching Profession Act.

40. Unreported judgement of the Teaching Profession Appeal Board, January 25, 1979. Youngberg et al vs. The Discipline Committee of The Alberta Teachers' Association et al.

41. Id. at p. 10, argument based on the case of Dr. Ringrose where "he faced one charge of unbecoming conduct of which three separate incidents are recited in the form of particulars" at 534 in (1978) 2 Western Weekly Reports, Ringrose v. College of Physicians and Surgeons of Alberta.

42. Id. at p. 12.

43. Id. at p. 13.

44. Id. at p. 14.

45. Id. at p. 12, quoted from the Province of Ontario Royal Commission Inquiry into Civil Rights (1968) at p. 1166.

46. Id. at p. 11.

47. Id. at p. 15.

48. Id. at p. 14.

49. Id.

50. Id. at p. 17.

51. C. 362, RSA 1970, s. 21(6).

FIGURE 1

LEGAL SETTING FOR TERM APPOINTMENTS OF SCHOOL ADMINISTRATORS IN ALBERTA

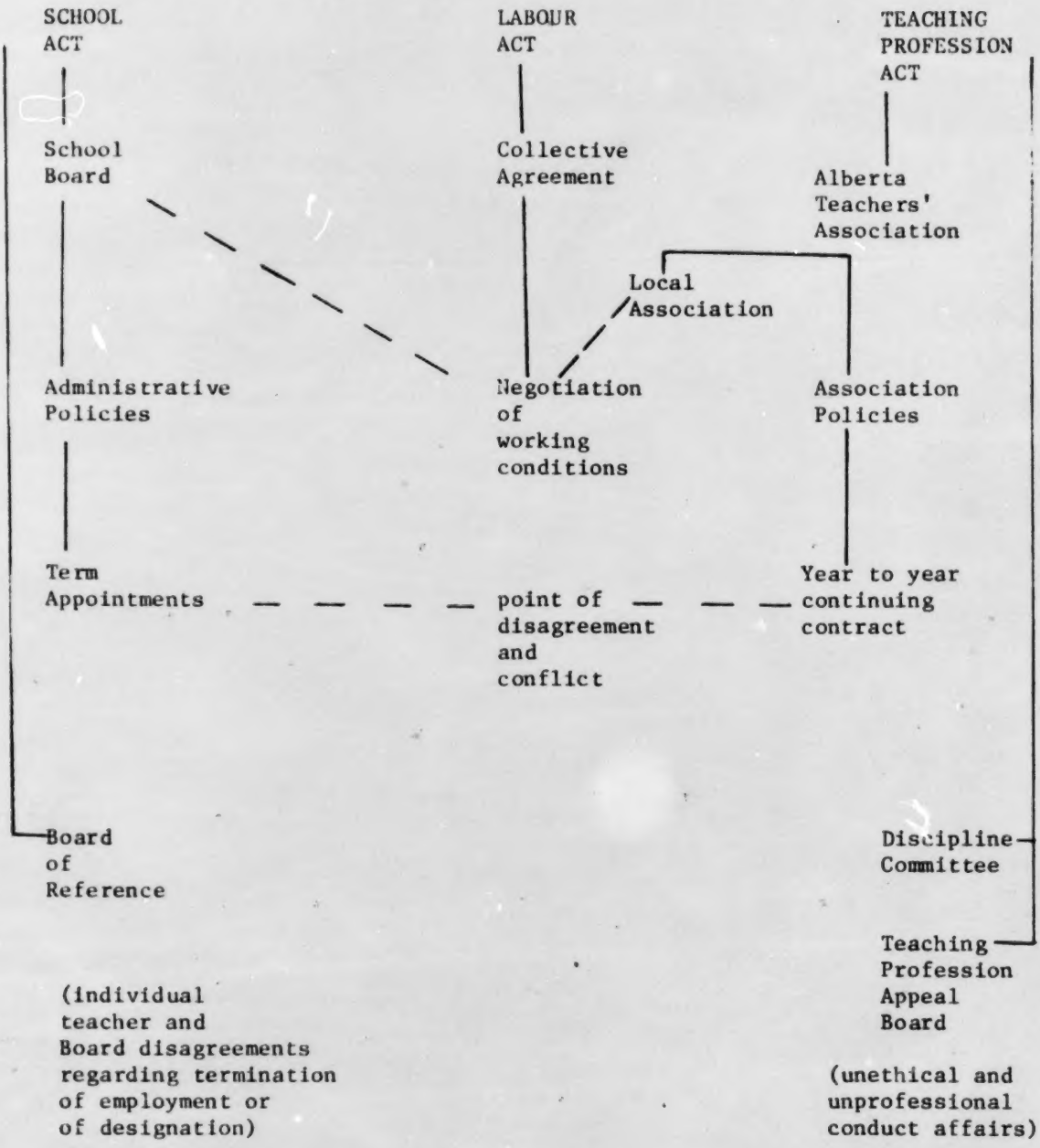
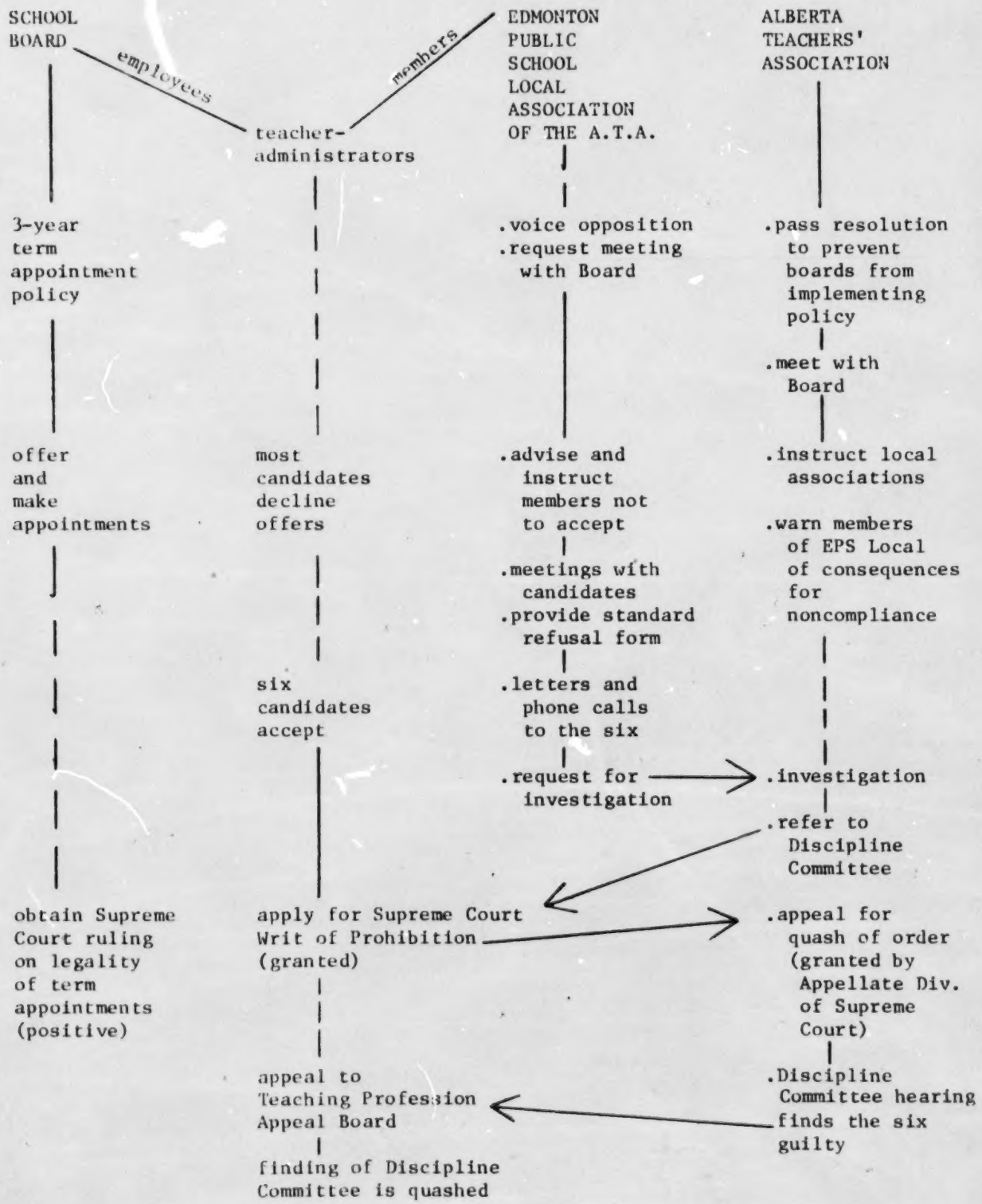


FIGURE 2

INTERIM RESOLUTION OF A CONFLICT
CONCERNING TERM APPOINTMENTS


SCHOOL BOARD
employees
members
EDMONTON PUBLIC SCHOOL LOCAL ASSOCIATION OF THE A.T.A.
ALBERTA TEACHERS' ASSOCIATION
teacher-administrators
3-year term appointment policy
.voice opposition
.request meeting with Board
.pass resolution to prevent boards from implementing policy
.meet with Board
offer and make appointments
most candidates decline offers
.advise and instruct members not to accept
.instruct local associations
.meetings with candidates
.warn members of EPS Local of consequences for noncompliance
.provide standard refusal form
six candidates accept
.letters and phone calls to the six
.request for investigation
.investigation
.refer to Discipline Committee
obtain Supreme Court ruling on legality of term appointments (positive)
apply for Supreme Court Writ of Prohibition (granted)
.appeal for quash of order (granted by Appellate Div. of Supreme Court)
appeal to Teaching Profession Appeal Board
.Discipline Committee hearing finds the six guilty
finding of Discipline Committee is quashed